

CASE No. 2:09cv02297

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IN THE  
UNITED STATES DISTRICT COURT  
FOR WESTERN DISTRICT OF TENNESSEE  
WESTERN DIVISION  
AT MEMPHIS

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HOWARD JEFFERSON ATKINS,  
PETITIONER-APPELLANT,

v.

JAMES M. HOLLOWAY, WARDEN,  
RESPONDENT-APPELLEE.

ON REMAND FROM  
THE UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT  
CASE NO. 12-6498

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MOTION TO SEPARATE GROUND ONE  
FROM GROUNDS TWO THROUGH FOUR  
– AND –  
MOTION TO PROCESS GROUND ONE TO COMPLETION  
BEFORE PROCEEDING ON GROUNDS TWO THROUGH FOUR

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COMES NOW, Petitioner, Howard J. Atkins, pro se, and presents this Motion to Address the Merits of GROUND ONE, his Eighth Amendment Miller issue, prior to and separate from his other habeas claims, effectively holding his other claims in abeyance pending disposition of this issue. In support of his Motion, Petitioner presents the following:

1. Ground One, Petitioner's Eighth Amendment Miller claim, and Grounds Two through Four, dealing with Sixth Amendment claims of ineffective assistance of counsel, are distinct and complex issues which would benefit from individualized attention.
2. Ground One presents primarily a question of *law*. The only witness testimony required would be to show proof of the mitigating factors applicable to Petitioner, and the mitigating factors would only be pertinent at a new sentencing hearing. The Petitioner has presented the mitigating factors in this habeas petition for the sole purpose of showing that there are substantial mitigating factors in Petitioner's favor, demonstrating why Petitioner is prejudiced by the current sentencing scheme.
3. Conversely, Petitioner's Sixth Amendment claims will put a significant financial burden on the state, due to the required evidence and witnesses involved, including a psychologist and Petitioner's trial and post-conviction counsel.
4. The Petitioner's conviction is over fourteen years old, and the various witnesses' memories may have faded significantly in the interim; and/or certain witnesses may no longer be available.
5. In addition, the presentation of Petitioner's Sixth Amendment claims may require the presence of a number of family members of both the Petitioner and the victim. The Petitioner would like to avoid putting them through this second trauma if possible.

6. An outcome favorable to Petitioner on his Miller claim *may* result in a resolution of the federal habeas corpus petition as a whole.
7. This is not an attempt to delay or draw out proceedings, but is simply an effort on the part of the Petitioner to approach this petition in a way that is least burdensome to all parties involved.

Wherefore, premises considered, Petitioner prays this Honorable Court grant these Motions and allow Ground One to proceed through all stages prior to Grounds Two through Four.

Respectfully submitted,



Howard J. Atkins #327480  
W.T.S.P. Site 1  
P.O. Box 1150  
Henning, TN 38041-1150

**CERTIFICATE OF SERVICE**

I, hereby certify that a true and exact copy of the foregoing has been forwarded via, First Class Mail, postage prepaid, to the following individuals:

**Herbert Slattery, Tennessee Attorney General  
C/O Scott C. Sutherland, Assistant Attorney General  
425 Fifth Ave. N.  
P.O. Box 20207  
Nashville, TN 37202-0207**

This the 12<sup>th</sup> day of August, 2015

Respectfully,



Howard J. Atkins  
W.T.S.P. Site 1  
P.O. Box 1150  
Henning, TN 38041-1150